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Parma Restaurant Corp. d/b/a Girafe Restaurant and Local 100, Hotel Employees and Restaurant Employees International Union, AFL-CIO. Case 2-CA-27717

March 15, 1996

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

On May 22, 1995, the National Labor Relations Board issued a Decision and Order,¹ *inter alia*, directing Respondent, Parma Restaurant Corp. d/b/a Girafe Restaurant, its officers, agents, successors, and assigns, to make its unit employees whole for its failure to make contractually required welfare and pension fund contributions in violation of the National Labor Relations Act. On August 29, 1995, the United States Court of Appeals for the Second Circuit entered its judgment enforcing the Board's Order.

A controversy having arisen over the amounts of delinquent contributions and penalties thereon due under the Board's Order, on October 23, 1995, the Regional Director for Region 2 issued a compliance specification and notice of hearing alleging the amounts due through September 1995, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter dated January 29, 1996, the Region advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by February 5, 1996, summary judgment would be sought. The Respondent filed no answer.

On February 13, 1996, the General Counsel filed with the Board a motion for summary judgment, with exhibits attached. On February 15, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no re-

sponse. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the motion for summary judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's motion for summary judgment. Accordingly, we conclude that the amounts of delinquent welfare and pension fund contributions and penalties thereon due through September 1995 are as stated in the compliance specification and we will order payment by the Respondent of those amounts, plus any additional amounts accruing on those amounts to the date of payment.²

ORDER

The National Labor Relations Board orders that the Respondent, Parma Restaurant Corp., d/b/a Girafe Restaurant, New York, New York, its officers, agents, successors, and assigns, shall make whole the unit employees by paying the following amounts to the Funds listed below, plus any additional amounts accruing thereon to the date of payment as set forth in *Merryweather Optical, Co.*, 240 NLRB 1213, 1216 fn. 7 (1979):

¹ 317 NLRB No. 81 (May 22, 1995) (not reported in Bound volume).

² The Respondent's welfare and pension fund obligations for all periods after September 1995 are reserved for future determination.

Hotel Employees and Restaurant
Employees International Union
Welfare Fund \$40,526.21

Hotel Employees and Restaurant
Employees International Union
Pension Fund 11,704.32

TOTAL: \$52,230.53

Dated, Washington, D.C. March 15, 1996

William B. Gould IV, Chairman

Margaret A. Browning, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD